

**BEFORE THE ARIZONA BOARD OF  
OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

IN THE MATTER OF:	)	
	)	
RICHARD BROWN, D.O.	)	<b>STIPULATION AND CONSENT</b>
Holder of License No. 2760 for the	)	<b>ORDER</b>
practice of osteopathic medicine in the	)	
State of Arizona.	)	
_____	)	

**STIPULATION**

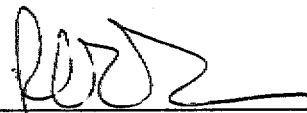
By mutual agreement and understanding, the Arizona Board of Osteopathic Examiners (hereafter "Board") and Richard Brown, D.O. (hereinafter "Respondent"), the parties hereto agree to the following disposition to this matter.

1. Respondent acknowledges that he has read this Stipulation and the attached Consent Order; and, Respondent is aware of and understands the content of these documents.
2. Respondent understands that by entering into this Stipulation, he voluntarily relinquishes any rights to a hearing on the matters alleged as grounds for Board action or to seek judicial review of the consent order in state or federal court.
3. Respondent understands that this Stipulation and Consent Order will not become effective unless approved by the Board and signed by its Executive Director.
4. Respondent further understands that this Stipulation and Consent Order, once approved and signed, shall constitute a public records which will be disseminated as a formal action of the Board as required by A.R.S. §§ 32-1855 (L) and (K).
5. Respondent admits to the statement of facts and conclusions of law contained in the Stipulated Consent Order.

6. All admissions made by Respondent are solely for final disposition of this matter and any subsequent administrative proceedings or litigation involving the Board, Respondent and the State of Arizona; and, therefore, said admissions by Respondent are not intended for any other purpose or administrative regulatory proceeding or litigation in another state or federal court.

7. Respondent acknowledges and agrees that upon signing and returning this document (or a copy thereof) to the Board's Executive Director, he may not later revoke or amend this Stipulation or any part of the Consent Order, although said Stipulation has not yet been accepted by the Board and issued by its Executive Director, without first obtaining Board approval.

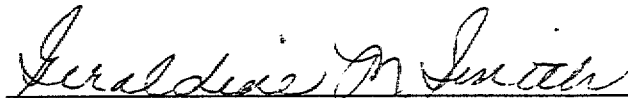
REVIEWED AND ACCEPTED this 23<sup>rd</sup> day of February, 1998.



Richard Brown, D.O.

STATE OF ARIZONA            )  
  ) ss  
County of ~~Maricopa~~ Pima

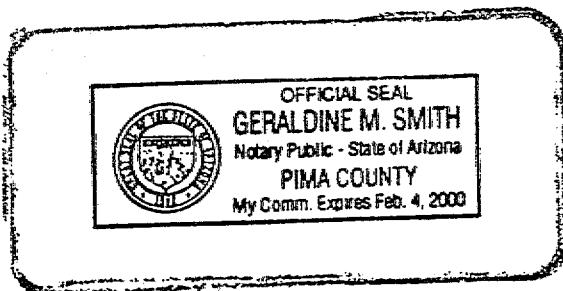
This instrument was acknowledged before me this 23 day of February, 1998 by the above-named individual.



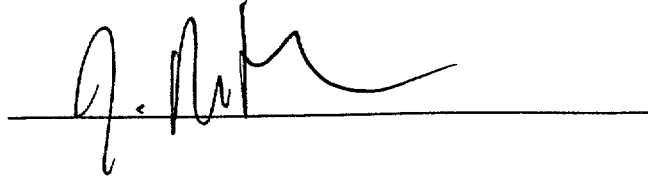
Notary Public

My Commission expires:

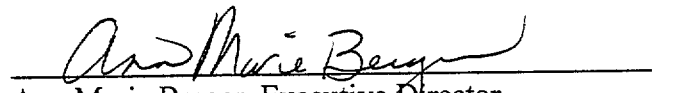
2/4/2000



**REVIEWED AND APPROVED** as to form by counsel for Respondent on this 27<sup>th</sup> day of February, 1998.

A handwritten signature in black ink, appearing to be "J. M. K.", written over a horizontal line.

**REVIEWED AND SIGNED** this 27<sup>th</sup> day of February, 1998 for the Board by:

A handwritten signature in black ink, appearing to be "Ann Marie Berger", written over a horizontal line.

Ann Marie Berger, Executive Director  
Arizona Board of Osteopathic Examiners in Medicine  
and Surgery



taking the controlled substance on October 14, 1997 without authorization from Dr. Rutz.

b. On October 20, 1997 Tenet Physician Services reviewed information regarding who was prescribed Vicodin ES. From the information provided, Respondent had on numerous occasions prescribed Vicodin ES for his father, brother, his wife as well as Dr. Rutz. It was also noted that Dr. Rutz had continued to prescribe Vicodin ES for Respondent without appropriate notes as to the reason in Respondent's medical charts.

c. During the investigation by Board staff, Dr. Rutz stated that she believed Respondent had an substance abuse problem related to the continual use of Vicodin, but continued to sign off on his removal of the Vicodin because of "right wrist pain". Dr. Rutz also stated that she had found five packets of Vicodin ES in Respondent's office on the floor last spring.

d. During the investigation by Board Staff, a former employee of Respondent's stated that she witnessed Respondent consume alcohol while practicing medicine, prescribe controlled substances for family members without proper record keeping, took a full box of Vicodin from the office for personal use, and continued to use Vicodin on several occasions.

3. In public session, the Board voted on October 24, 1997 that Respondent was an immediate threat to the health and welfare of the public. Respondent did not make an appearance at the Board's public session on October 24, 1997.

### **CONCLUSIONS OF LAW**

The aforementioned conduct alleged against Respondent constitutes unprofessional conduct as defined at A.R.S. § 32-1855:

- (3) Practicing medicine while under the influence of alcohol, narcotic or hypnotic drugs or any substance that impairs or may impair the licensee's ability to safely and

skillfully practice medicine.

- (19) Any conduct or practice contrary to recognized standards of ethics of the osteopathic medical profession.
- (21) Failing or refusing to maintain adequate records on a patient.
- (22) Using controlled substances or prescription-only drugs unless they are provided by a medical practitioner, as defined in section 32-1901, as part of a lawful course of treatment.
- (23) Prescribing controlled substances to members of one's immediate family unless there is no other physician available within fifty miles to treat a member of the family and an emergency exists.
- (38) Prescribing or dispensing controlled substances or prescription-only medications without maintaining adequate and appropriate patient records.
- (39) Failing to dispense drugs and devices in compliance with article 4 (A.A.C. R4-22-107) of this chapter.
- (41) Any conduct or practice that impairs the licensee's ability to safely and skillfully practice medicine or that may reasonably be expected to do so.

#### **ORDER**

Pursuant to the authority vested in the Board, **IT IS HEREBY ORDERED THAT:**

1. Richard Brown, D.O. ("Respondent") shall refrain from the practice of osteopathic medicine and surgery until he has complied with the following terms and conditions of this agreement:

- a. Respondent will successfully complete the in-patient evaluation for possible chemical dependency at either Springbrook Northwest in Newberg, Oregon (hereinafter "Springbrook") or Talbott Recovery Center in Atlanta, GA (hereinafter "Talbott").

Should Springbrook or Talbott find an assessment of chemical dependency, Respondent will follow the recommendations for treatment.

- b. Respondent will develop a plan for aftercare treatment and monitoring which shall include, but may not be limited to, individual and/or group counseling sessions, random body fluid testing, agreement for release of treatment records and reports to the Board, prohibition of the use of alcohol and controlled substances unless the latter is prescribed or coordinated by his treating physician, and regular meetings with the Board, and submit this plan to the Board for its approval.

2. Respondent will sign a release authorizing personnel at Springbrook or Talbott inform the Board of his progress as to his in-patient evaluation and any in-patient treatment program, and will provide the Board with a copy of any and all records pertinent to his diagnosis and treatment while a patient at said facility and upon discharge.

3. Respondent will meet with the Board upon reasonable notice after discharge from Springbrook Northwest to discuss his compliance with this agreement and to discuss the terms and conditions under which he will be allowed by the Board to resume the practice of osteopathic medicine and surgery in the State of Arizona.

- a. Respondent's Board License No. 2760 for the practice of osteopathic medicine and surgery in the State of Arizona is hereby placed under probation for five (5) years and shall comply with the terms and conditions of probation as set forth herein. That period may be shortened upon application by the Respondent and approval by the Board. Respondent may not request any modification during the first year of probation.

- b. Respondent shall participate in a mini-residency program regarding proper prescription habits within six months of the date of this Order and shall obtain at least twenty continuing medical education ("CME") credits in the subject area of appropriate prescribing of narcotic and controlled substances and substance addiction in the first two years of the probationary

term. This additional twenty CME credits is above the required amount of CMEs required for renewal of licensure.

c. As a further term of probation, during the first three years of probation, Respondent will be subject to review of all aspects of his medical practice; but, said review shall primarily be in the area of diagnosis and treatment of patients and maintenance of patient records. The Board's Medical Consultant shall undertake this review as the Board's designated representative and in the following manner.

(i) A random review of at least ten patient records selected at the reviewing physician's discretion shall be conducted every 120 days, commencing with the effective date of this Order. Respondent shall fully cooperate with the reviewing physician and provide copies of patient records and related information.

(ii) The Medical Consultant shall prepare a written report for the Board and a copy to Respondent reflecting any relevant findings or opinions concerning Respondent's medical practice activity and compliance with this Order.

d. In the event that the reviewing physician's report discloses deficiencies in Respondent's medical knowledge or proficiency, the Board may order, at its discretion and without expressly making any finding of unprofessional conduct, the completion of an additional twenty-five hours of CME per year during the period of probation. This provision shall not limit the Board in taking other disciplinary action in the event that it has cause to invoke its statutory authority.

e. Respondent shall provide a copy of this Order and any subsequent Orders to all facilities where Respondent is currently (or subsequently) employed as a physician and/or has (or subsequently receives) privileges to engage in the practice of medicine; and, Respondent shall



continue to make the aforementioned disclosure and provide the copies of this Consent Order until the expiration of this Order.

f. Respondent shall not consume illicit drugs or take any controlled substances (i.e. prescription only drugs), unless the treating physician prescribes such medication for Respondent. Respondent shall maintain a monthly log (for the duration of probation) of all prescription only drugs taken by him and such log shall include the following information:

- (i) the name of the medication;
- (ii) the name of the prescribing physician;
- (iii) the reason for the medication.

At the first of each month, Respondent shall report by letter to the Board whether or not she is taking any prescription only medication and, if so, a copy of the log reflecting the above information.

g. Respondent shall also, as part of his probation: (A) submit to and cooperate in any independent medical or psychological evaluation that is ordered by the Board for Respondent and conducted by the Board's designated physician and/or psychologist which shall be paid for by Respondent; and (B) appear before the Board, upon receipt of a request by written or telephonic notification from the Board's Executive Director which shall be given at least five (5) days prior to the Board Meeting; and, (C) submit to random biological fluid testing and promptly provide (i.e., within sixty (60) minutes of notification) required biological fluids for testing and said testing shall be done at the Respondent's expense.

h. This order shall supercede and replace all prior orders of the Board concerning Respondent.

4. Should Respondent fail to comply with any of the terms and conditions of this stipulation and agreement, the Board may, upon notice and opportunity to be heard, take disciplinary action against his license to practice osteopathic medicine and surgery in the State of Arizona.

5. In the event Respondent ceases to reside in Arizona, he will give written notice to the Board of his new residence address within twenty (20) days of moving; and, the terms and duration of probation may be stayed by the Board until Respondent returns to Arizona.

6. Respondent will continue to meet all licensing requirements such as continuing medical education and renewal requirements including applicable fees pursuant to A.R.S. § 32-1825.

7. The Board's Executive Director will send correspondence to the appropriate state and/or federal law enforcement agency disclosing information in the Board's possession which may establish criminal misconduct by Respondent, i.e., illicit use of controlled substances and obtaining controlled substances illegally.

8. The Board may require that Respondent as part of his temporary suspension: (A) submit to and cooperate in any independent medical or psychological evaluation that is ordered by the Board for Respondent and conducted by the Board's designated physician/or psychologist which will be paid for by Respondent; and (B) appear before the Board, upon receipt of a request by written or telephonic notification from the Board's Executive Director which will be given at least five (5) days prior to the Board meeting; and, (C) submit to random biological fluid testing and promptly provide (i.e. within sixty (60) minutes of notification) required biological fluids for testing and said testing will be done at the Respondent's expense.

9. Respondent will reimburse the Board for all expenses associated with the investigation, hearing and continued monitoring of this matter.

10. Respondent's failure to comply with the requirements of this Order shall constitute unprofessional conduct as defined at A.R.S. § 32-1854(26), as amended, and will be considered as grounds for further disciplinary action (e.g., suspension or revocation of license) in the event that Respondent fails to comply with any of the requirements of this Order.

ISSUED this 27<sup>th</sup> day of February, 1998.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS  
IN MEDICINE AND SURGERY

By: Ann Marie Berger  
Ann Marie Berger, Executive Director  
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(602) 657-7703

Served by personal service or  
sending U.S. certified mail  
this 3<sup>rd</sup> day of February, 1998 to:  
March

Richard Brown, D.O.  
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Tucson AZ 85718

Copy mailed this 3<sup>rd</sup> day of February, 1998  
to: March

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